

(29) FILED

NOV 24 1944

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In the Supreme Court of the United States

OCTOBER TERM, 1944.

No. 700

CAROLA HUNTER,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ROBERT HUNTER,
Petitioner,

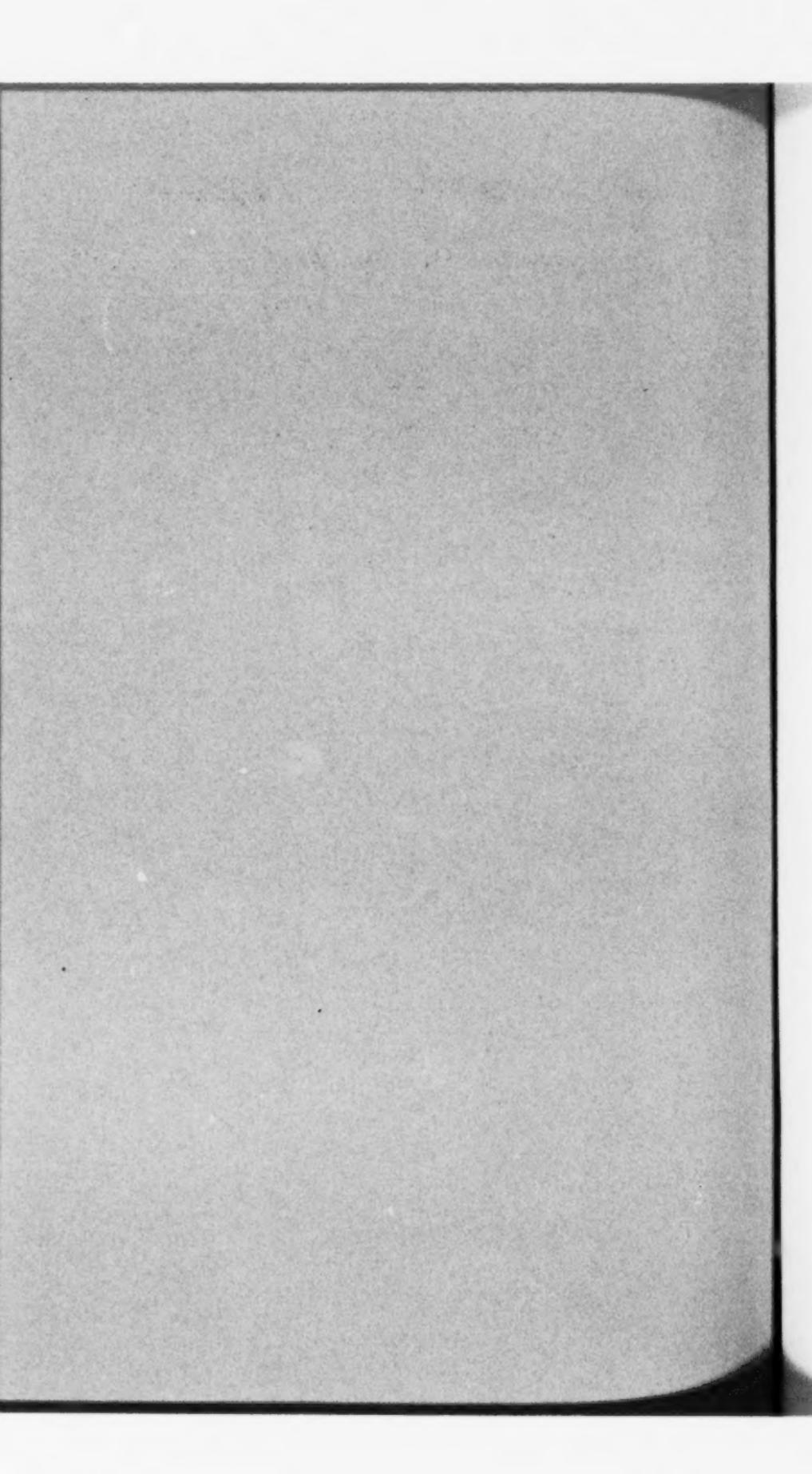
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit and
BRIEF IN SUPPORT OF PETITION.

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Of Counsel.



SUBJECT INDEX.

	Page
PETITION FOR WRIT OF CERTIORARI.....	1
Statement of matter involved.....	2
Jurisdiction	2
Questions presented	2
Reasons relied upon for allowance of writ.....	3
Prayer	3
BRIEF IN SUPPORT OF PETITION.....	5
Jurisdiction	5
Statement of case.....	5
Specification of errors.....	6
Argument	6
I. The taxpayers' expenditures were ordinary and necessary expenditures paid in carrying on tax- payers' business, and were deductible under § 23(a) of the Revenue Act.....	6
II. The decision of the Tax Court in a case where the facts are undisputed, is a determination of a mat- ter of law, and is not a finding of fact which is binding upon any court.....	11
APPENDIX	14

TABLE OF AUTHORITIES.

Cases.	
<i>Cowell, I. M.</i> , 18 B. T. A. 997.....	8
<i>Dobson v. Commissioner</i> , 320 U. S. 489.....	3, 6, 11, 12, 13
<i>Grand Rapids Railroad Company v. Doyle</i> , 245 F. 792	9
<i>Illinois Merchants Trust Company v. Maniere</i> , 4 B. T. A. 103	7
<i>Kingsley, Louise</i> , 11 B. T. A. 296.....	9

<i>Kurtz, Max</i> , 8 B. T. A. 679.....	9
<i>Marble & Shattuck Chair Company v. Commissioner</i> , 39 F. (2d) 393 (C. C. A. 6).....	8
<i>McMillan, E. J.</i> , B. T. A. Memo. Opinion, Docket 97724	9
<i>Parkersburg Iron & Steel Company v. Burnet</i> , 48 F. (2d) 163 (C. C. A. 4).....	8
<i>Potter, E. L.</i> , 20 B. T. A. 252.....	9
<i>Rose, Collector of Internal Revenue v. Haverty Furni-</i> <i>ture Co.</i> , 15 F. (2d) 345 (C. C. A. 5).....	9
<i>Schmid, John A.</i> , 10 B. T. A. 1152.....	9
<i>Squier</i> , 13 B. T. A. 1223.....	9
<i>Thal v. Commissioner</i> , 142 F. (2d) 874.....	12
<i>Treat Hardware Corporation v. Commissioner of In-</i> <i>ternal Revenue</i> , 6 B. T. A., 768.....	9

Other Authorities.

57 <i>Harvard Law Review</i> , 754.....	12
4 <i>Mertens, Law of Federal Income Taxation</i> § 25.32..	9

Statutes.

Internal Revenue Code § 23(a)	2, 6, 14
Treasury Regulations 103.....	14

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PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit.

To the Honorable Harlan F. Stone, Chief Justice of the
United States and the Associate Justices of the Su-
preme Court of the United States:

The undersigned, on behalf of Carola Hunter and Robert Hunter, petitioners, prays that a writ of certiorari may issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit, entered October 18, 1944, in the consolidated cases between the above named parties docketed therein as Number 9763, affirming the judgment of the Tax Court of the United States, wherein the parties stood in the same relation as in the above caption.

STATEMENT OF MATTER INVOLVED.

These cases involved deficiencies in individual income taxes redetermined by the Tax Court in the separate returns of the taxpayers in the aggregate sum of \$2758.39, for the taxable year 1940. (R. 83.)

The petitioners purchased a farm of about 137 acres on July 1, 1940, and operated it as partners. (R. 75.) Thereafter, from time to time, and not according to any plan, throughout the rest of the year, the farm was reconditioned in several respects. (R. 59, 61.) These expenditures were made for dynamite fuses and caps for blowing out stumps and rocks, lumber, nails and labor for repairing broken boards in out-buildings, paint, brushes and labor in painting exterior of buildings, paper and paint for interior of house, replacement of broken downspouting and gutters, and returning a creek which ran through the farm to its former bed. (R. 76.) The cost of all this was deducted by the taxpayers in their individual returns as an ordinary and necessary expense incurred during the taxable year in carrying on the business of farming.

All these items were disallowed by the Tax Court which, upon appeal, was affirmed by the Circuit Court.

There was no disagreement as to the facts, the petitioner, Robert Hunter, being the only witness.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered October 18, 1944.

The jurisdiction of this Court is invoked under § 240 (a) of the Judicial Code, as amended, U. S. C. Tit. 28, § 347.

QUESTIONS PRESENTED.

1. Were the taxpayers' expenditures above set forth ordinary and business expenses under the provisions of § 23(a) of the Revenue Act?

2. Is the determination of the Tax Court that these expenditures are not deductible and are capital additions, conclusive upon the Circuit Court under the decision in *Dobson v. Commissioner*, 320 U. S. 489?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

1. The decision of the Circuit Court of Appeals is in conflict with the decisions of other Circuit Courts of Appeals and the Tax Court, on the same matter, all of said items above mentioned having been held properly deductible as repairs in previous decisions of other Circuit Courts and the Tax Court.

2. The Circuit Court of Appeals has misapplied *Dobson v. Commissioner*, in holding that there was substantial evidence to support the findings of fact and decisions of the Tax Court, where the facts were undisputed.

3. The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by the Tax Court as to call for an exercise of this Court's power of supervision.

4. The Circuit Court has decided an important question relating to the income tax law, which has not been, but should be, settled by this Court.

PRAYER.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals of the Sixth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket No. 9763, *Carola Hunter, Petitioner, vs. Commissioner of Internal Revenue, Respondent, and Robert E. Hunter, Petitioner, vs. Commissioner of Internal Revenue, Respondent*, (consolidated

actions), to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment herein of said Circuit Court of Appeals be reversed by the court, and for such other and further relief as to this Court may seem proper.

CAROLA HUNTER,

ROBERT HUNTER,

BY C. J. HOYT,

Counsel for Petitioners.

G. F. HAMMOND,

Of Counsel.

Dated November 20th, 1944.

